INDEX

CITATIONS

Cases:

377632—56——1

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, PETITIONER

v.

TOM WE SHUNG

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above entitled case on October 13, 1955, reversing the judgment of the United States District Court for the District of Columbia which had held that it had no jurisdiction to review an order excluding an alien from the United States in proceedings other than habeas corpus.

OPINIONS BELOW

The opinion of the Court of Appeals, (App. B, *infra*, pp. 31–32; R. 21–22) is reported at 227 F.

2d 40. The findings of fact and the conclusions of law of the District Court (App. B, *infra*, p. 34; R. 19) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 13, 1955 (App. B, *infra*, p. 33); R. 23). On January 9, 1956, by order of Chief Justice Warren (App. C, *infra*, p. 35), the time for filing a petition for a writ of certiorari was extended to and including March 10, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the Immigration and Nationality Act of 1952 authorizes judicial review by proceedings other than habeas corpus of an order excluding an admitted alien from the United States.

STATUTE INVOLVED

Section 236 (c) of the Immigration and Nationality Act of 1952, 66 Stat. 163, 200, 8 U. S. C. 1226 (c), provides:

> EXCLUSION OF ALIENS
>
> SEC. 236 * * * (c) Except as provided in subsections (b) or (d), in every case where an alien is excluded from admission into the United States, under this Act or any other law or treaty now existing or hereafter made, the decision of a special inquiry officer shall be final unless reversed on appeal to the Attorney General.

The pertinent provisions of Sections 235 (b) and (c), 236, 242 (b), (c) and (e), and 360 (a) of the Act are set forth in Appendix A, *infra*, pp. 23–30.

STATEMENT

Respondent is an admitted alien seeking entry into the United States, as the blood son of an American citizen who served in the United States armed forces during World War II, pursuant to the provisions of the War Brides Act of December 28, 1945, 59 Stat. 659, 8 U. S. C. (1946 ed.) 232 (R. 15, 16). In January 1948 and February 1949, Boards of Special Inquiry held that respondent was inadmissible to the United States on the ground that he had not established that he was the son of an American citizen (R. 15). Their action was affirmed by the Board of Immigration Appeals (R. 16).

Respondent first sought judicial review of the order of exclusion by a declaratory action instituted before the effective date of the Immigration and Nationality Act of 1952. His complaint was considered on the merits and dismissed on the ground that the order was valid. *Tom We Shung* v. *McGrath*, 103 F. Supp. 507 (D. D. C.), affirmed, *Tom We Shung* v. *Brownell*, 207 F. 2d 132 (C. A. D. C.). This Court vacated the judgment and remanded the cause to the District Court with directions to dismiss for lack of jurisdiction on the authority of *Heikkila* v. *Barber*, 345 U. S. 229, which had held that habeas

corpus was the only remedy open to an alien ordered deported under the Immigration Act of 1917. 346 U. S. 906.

On December 15, 1953, respondent again sought review of the order of exclusion by a declaratory judgment action filed in the District Court for the District of Columbia on the theory that the right to such review was conferred by the 1952 Act (R. 15–16). The District Court dismissed the complaint on the ground that it was without jurisdiction to review an order of exclusion in proceedings other than habeas corpus (App. B, *infra*, p. 34; R. 19).

On appeal, the Court of Appeals reversed (App. B, *infra*, pp. 31–32, R. 21–23) on the authority of *Estevez* v. *Brownell*, 227 F. 2d 38, decided by that court on the same day. In *Estevez*,[1] the Court of Appeals held that, in view of this Court's decision in *Shaughnessy* v. *Pedreiro*, 349 U. S. 48, that deportation orders were by the 1952 Act made subject to review under the Administrative Procedure Act, 60 Stat. 237, 5 U. S. C. (1952 ed.) 1001 *et seq.*, that remedy is also available under the 1952 Act to review orders excluding aliens from the United States, even though under Section 360 of that Act (App. A, *infra*, pp. 29-30) excluded persons claim-

[1] The Court of Appeals decision in *Estevez* is set forth in Appendix D, *infra*, pp. 36–38. On August 27, 1955, plaintiff Estevez voluntarily departed from the United States, thereby, in our opinion, rendering the cause moot. For this reason, we are not applying for certiorari in *Estevez*.

ing citizenship are explicitly relegated to review by habeas corpus alone. The court below also held in the instant case, contrary to the decision of the Ninth Circuit in *Heikkila* v. *Barber*, 216 F. 2d 407, certiorari denied, 349 U. S. 927, that the dismissal of petitioner's pre–1952 action was not *res judicata* with relation to the present action, and that the remedy of judicial review under the Administrative Procedure Act, was made applicable to exclusion by the 1952 Act, and was available as a method of seeking review of exclusion orders issued prior to the effective date of that act.

REASONS FOR GRANTING THE WRIT

The basic issue in this case, and the only one which the government presents to this Court,[2] is

[2] As set forth in the Statement, *supra*, the court below expressly disagreed with the decision of the Court of Appeals for the Ninth Circuit in *Heikkila* v. *Barber*, 216 F. 2d 407, certiorari denied, 349 U. S. 927 (after the decision in *Heikkila* v. *Barber*, 345 U. S. 229), as to whether the determination in the proceeding brought before the effective date of the 1952 Act was *res judicata* as to the proceeding instituted after the effective date. We do not regard this conflict as of sufficient importance to require determination by this Court, since there are not many cases where the remedy of declaratory judgment was pursued but dismissed before 1952 and then a declaratory judgment action brought after 1952. Moreover, the decision of the Ninth Circuit was rendered before this Court had decided *Shaughnessy* v. *Pedreiro*, 349 U. S. 48. In opposition to certiorari in the second *Heikkila* case, the government did not rely upon *res judicata* but on the contention that declaratory judgment, even if it were

whether an order excluding an admitted alien from admission into the United States is now reviewable by the courts in proceedings other than habeas corpus. The court below has ruled that, since under the Immigration and Nationality Act of 1952 deportation orders have been held in *Shaughnessy* v. *Pedreiro*, 349 U. S. 48, to be subject to challenge in a review proceeding under Section 10 of the Administrative Procedure Act, 60 Stat. at 248, 5 U. S. C. 1009, exclusion orders must likewise now be deemed reviewable by such a proceeding. For the reasons shown below at pp. 7–22, that ruling ignores the fundamental differences between exclusion and deportation (see *Shaughnessy* v. *Mezei*, 345 U. S. 206, 213) and fails to take into account the different language, statutory structure and legislative history of the 1952 Act with respect to exclusion proceedings, as distinguished from deportation proceedings.

The question is an important and continuing one, affecting a large number of cases. During the fiscal year ending June 30, 1955, aliens ex-

---

permissible after 1952, would not be applicable to pre-1952 orders. Upon further consideration, however, the government has abandoned that position. It did not seek certiorari from the decision of the Court of Appeals for the District of Columbia Circuit in *Muscardin* v. *Brownell*, 227 F. 2d 31, holding that pre-1952 *deportation* orders can, subsequent to the 1952 Act, be reviewed by declaratory judgment action, and does not argue here that, if the 1952 Act does permit declaratory judgment action to review *exclusion* orders, such remedy would not be available to respondent.

cluded after formal hearings totalled 2,667. Since the question affects, at the very least, the procedure for review of all orders issued after formal exclusion hearings, the significance of the issue in the administration of the 1952 Act for present and future cases is evident.

1. The decision of this Court on petitioner's prior complaint (346 U. S. 906) established that, prior to 1952, orders of exclusion were reviewable only in habeas corpus proceedings, even after enactment of Section 10 of the Administrative Procedure Act. That had also been the law with respect to deportation proceedings, the Court having enunciated the reasons for this holding in *Heikkila* v. *Barber,* 345 U. S. 229, reasons which applied *a fortiori* to orders of exclusion. In *Heikkila*, this Court held that Section 19 of the Immigration Act of 1917, 39 Stat. 874, 889, which made determinations of the Attorney General in deportation proceedings "final", when read against the "background of a quarter of a century of consistent judicial interpretation", precluded "judicial intervention in deportation cases except insofar as it was required by the Constitution". 345 U. S. at 234–235. The language of finality in the 1917 Act was even stronger with respect to exclusion orders, Section 17 of that Act, 39 Stat. at 887, having provided in pertinent part:

> In every case where an alien is excluded from admission into the United States,

> under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Secretary of Labor * * *.

Furthermore, as we develop below, the course of judicial decision had even more clearly than in deportation established that such orders were subject to only the most limited form of judicial review.

For this reason, as well as the others we discuss, we note at the outset that the holding of this Court in *Shaughnessy* v. *Pedreiro*, 349 U. S. 48, that the finality clause with respect to deportation orders in Section 242 (b) of the 1952 Act did not preclude judicial review of such orders under Section 10 of the Administrative Procedure Act, does not, contrary to the holding below, necessarily require that the finality clause in Section 236 (c) (*infra*, p. 9) relating to exclusion proceedings be similarly interpreted. While the *Heikkila* holding as to deportation was *a fortiori* applicable to exclusion, as this Court in effect held when it cited *Heikkila* in the prior decision in petitioner's case (346 U. S. 906), it does not follow that a change in the law as to deportation automatically carries over to exclusion. The considerations which influenced this Court's decision in *Pedreiro* with respect to deportation orders do not apply to orders of exclusion.

2. The language of the finality clause with respect to exclusion is still, as it previously was, different from the finality clause with respect to deportation.[3] Section 236 (c) provides:

> Except as provided in subsections (b) or (d), in every case where an alien is excluded from admission into the United States, under this Act or any other law or treaty now existing or hereafter made, the decision of a special inquiry officer shall be final unless reversed on appeal to the Attorney General.

On the other hand, Section 242 (b), 66 Stat. at 209, 8 U. S. C. 1252 (b)—relating to deportation—provides in pertinent part:

> In any case in which an alien is ordered deported from the United States under the provisions of this Act, or of any other law or treaty, the decision of the Attorney General shall be final.

The finality clause relating to exclusion, unlike that for deportation, imposes finality on decisions made below the Attorney General at the lowest level, and then makes provision for review, but only for administrative review by the Attorney General. The intention not to have any other form of review is further shown by the exceptions

[3] Even if the wording were similar, such similarity would not necessarily require the same interpretation in a different setting. "The same words, in different settings, may not mean the same thing." *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U. S. 667, 678; see also *Tutun* v. *United States*, 270 U. S. 568, 578–579; *Towne* v. *Eisner*, 245 U. S. 418, 425.

in subsections (b) and (d) of Section 236 (App. A, *infra*, pp. 25–26), referred to in Section 236 (c), which are to temporary exclusions in security cases and to exclusions for certain medical reasons as to which the statute specifically provides that there shall be no appeal of any kind. Hence, the finality clause of Section 236 (c) (relating to exclusion) is a much clearer indication than is Section 242 (b) (deportation) of the Congressional purpose, so far as possible, to preclude judicial review of exclusion orders. The wording of Section 236 (c) in itself brings exclusion orders within the exception of the first part of Section 10 of the Administrative Procedure Act, rendering Section 10 inapplicable to those administrative actions where the statute precludes judicial review. See *Heikkila* v. *Barber*, 345 U. S. 229, 231–232. As we shall show, constitutional considerations, historical background, statutory structure, legislative history, and practical results all buttress this conclusion.

3. Constitutionally, an alien seeking admission into the United States is in a very different position from that of resident aliens whom the government is seeking to deport. This distinction has been recognized by the courts. *Shaughnessy* v. *Mezei*, 345 U. S. 206, 212; *Kwong Hai Chew* v. *Colding*, 344 U. S. 590, 596; *Han-Lee Mao* v. *Brownell*, 207 F. 2d 142, 146 (C. A. D. C.); *Ex parte Domingo Corypus*, 6 F. 2d 336 (W. D.

Wash.). The basis of the distinction rests upon the fact that the alien seeking admission has not come within the protection of the Constitution as has a resident alien. The difference in the constitutional rights of the two classes was succinctly summarized by this Court in *Shaughnessy* v. *Mezei*, 345 U. S. at 212, as follows:

> It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law. * * * But an alien on the threshold of initial entry stands on a different footing: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."[4]

Although the right of judicial review of administrative orders is not inevitably a part of due process, this Court has recognized that the Administrative Procedure Act reflects a hospitable attitude toward such right. *Shaughnessy* v. *Pedreiro*, 349 U. S. 48, 51. Hence, as to resident aliens, who in deportation proceedings are constitutionally entitled to procedural due process, there is reason, where the statutory language is not clear, to consider as applicable to such proceedings the generally accepted standards of administrative action and judicial review, even though such

[4] Citing *Knauff* v. *Shaughnessy*, 338 U. S. 537, 544, and *Ekiu* v. *United States*, 142 U. S. 651, 660.

standards may not rise to the dignity of a constitutional right. Compare *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, with *Marcello* v. *Bonds*, 349 U. S. 302. There is, however, no such reason for this attitude with respect to alien exclusion procedures which, as noted above, have never had the constitutional status of deportation hearings.

4. In exclusion cases involving no claim of citizenship (as here), the area of judicial review has always been extremely limited. While it was early held that an alien, detained aboard a vessel and not allowed to land, was sufficiently deprived of his liberty by authority of a federal officer to be able to bring habeas corpus, *Chew Heong* v. *United States*, 112 U. S. 536, it was also held that the area of review in habeas corpus was very narrow. As this Court noted in its *Heikkila* decision, 345 U. S. at 233–235, Section 8 of the Immigration Act of 1891, 26 Stat. 1084, 1085, a finality clause much like that of the 1952 Act,[5] was held in *Ekiu* v. *United States*, 142 U. S. 651, 664, to have been "manifestly intended to prevent the question of an alien immigrant's right to land, when once decided adversely by an inspector, acting with the jurisdiction conferred upon him, from being impeached or reviewed, in the courts

[5] Section 8 provided in part: "All decisions made by the inspection officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury."

or otherwise, save only by appeal to the inspector's official superiors, and in accordance with the provisions of the act". As this Court further noted in *Heikkila*, by 1901 Chief Justice Fuller was able to describe as "for many years the recognized and declared policy of the country" the congressional decision to place "the final determination of the right of admission in executive officers, without judicial intervention". 345 U. S. at 234. While this degree of finality was subsequently modified to the extent of recognizing that aliens had the right to question whether executive officers were acting in accordance with law, *Gegiow* v. *Uhl*, 239 U. S. 3, 9, and not in abuse of power, *Tulsidas* v. *Insular Collector*, 262 U. S. 258, 263, this Court has never departed from the principle that, as to aliens seeking admission, the final authority rests in the executive branch. See *Knauff* v. *Shaughnessy*, 338 U. S. 537.

On the other hand, as this Court also recognized in *Heikkila*, 345 U. S. at 236, as to deportation, while the early cases did talk of finality in much the same terms as in exclusion (see *Japanese Immigrant* Case, 189 U. S. 86; *Pearson* v. *Williams*, 202 U. S. 281), historically there has been a tendency, in actual practice, to broaden the scope of judicial review. E. g., *Vajtauer* v. *Commissioner*, 273 U. S. 103; *Bridges* v. *Wixon*, 326 U. S. 135; see also *Galvan* v. *Press*, 347 U. S. 522. The difference between the standard of re-

view in the two types of cases was noted by this Court in *Knauff* v. *Shaughnessy*, 338 U. S. 537, 543:

> Whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to *exclude* a given alien. [Emphasis added.]

A holding that Section 10 of the Administrative Procedure Act applied to deportation orders, even if Section 10 (e) with its standard of "substantial evidence" governed, thus made no real change in the scope of judicial review of deportation orders, particularly under the 1952 Act which provides in Section 242 (b) (4) (App. A, *infra*, pp. 26–28) that "no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence". On the other hand, to apply the standard of the Administrative Procedure Act to exclusion proceedings would be a novel departure from a long established Congressional and judicial policy. Such a change should not be attributed to Congress unless that purpose is clearly expressed in unmistakable terms. Congress has, in the 1952 Act, given no indication that it did intend such a change.

5. As already noted, the language of the 1952 Act carried over, as to exclusion, a finality clause

which in terms was different from the finality clause relating to deportation, and which for years had been interpreted as permitting only extremely narrow judicial review. There are other significant differences in the statutory structure with respect to exclusion, as distinguished from deportation, which indicate that there was no purpose to permit general judicial review under the Administrative Procedure Act as to orders of exclusion.

One such difference, already noted, is that as to deportation there is in the statute a specific recognition of the substantial evidence standard. No such provision appears in Sections 235 and 236 (App. A, *infra*, pp. 23–26) dealing with exclusion. In fact, Section 235 (c) explicitly authorizes denial of a hearing to an excluded alien on confidential information, thus showing a specific purpose that there be no judicial review of the evidence. Another is that Sections 242 (c) and (e) (App. A, *infra*, pp. 28–29), relating to deportation, contain references to judicial review, whereas Sections 235 and 236 do not.

These statutory provisions must also be read in the light of Section 360 of the 1952 Act (App. A, *infra*, pp. 29–30) dealing with claims of citizenship. Whereas Section 503 of the Nationality Act of 1940, 54 Stat. 1137, 1171, 8 U. S. C. (1946 ed.) 903, had permitted institution of declaratory judgment actions by any one who had been denied a right or privilege as a national of the

United States upon the ground that he was not an American national, Section 360 permits such actions only by one denied such a right *who is already within the United States.* Under Section 360, where the issue of citizenship arises in an exclusion proceeding, it is first to be considered administratively, as in the case of any alien seeking admission, and a determination rejecting the claim is "subject to review by any court of competent jurisdiction in habeas corpus proceedings and not otherwise".

The court below recognized in its companion decision in *Estevez* v. *Brownell*, 227 F. 2d 38, that Section 360 limits the opportunities for judicial review available to arrivals claiming citizenship, but thought that this had no relevancy to the problem of this case relating to the kind of review open to entrant aliens (App. D, *infra*, pp. 37–38). This is an unreasonable interpretation. It is in the highest degree unlikely that Congress decided to give to one concededly an alien, seeking admission, a greater right of review than was made available to persons claiming citizenship. On the other hand, that Congress specifically provided only for habeas corpus review with respect to citizens seeking admission, is in itself a rather clear indication that Congress considered habeas corpus the only method of review open to excluded aliens.

6. Insofar as the legislative history bears on the problem, it very strongly supports the view

that habeas corpus is the only method of review of exclusion orders. While, as this Court noted in *Shaughnessy* v. *Pedreiro,* 349 U. S. at 52, there were statements by Senator McCarran and Representative Walter, the sponsors of the 1952 Act, which can be read as indicating that they thought judicial review of deportation orders was available under Section 10 of the Administrative Procedure Act, there are no equivalent statements as to review of exclusion orders. We do not attempt here to retrace the legislative history of the Act, which is discussed in the government's brief in *Shaughnessy* v. *Pedreiro,* No. 374, O. T. 1954, pp. 14–28. It is sufficient to point out that one of the main reasons offered by both Congressman Walter and Senator McCarran in opposition to amendments specifically providing for general judicial review of exclusion and deportation orders was that such amendments would result in general judicial review of exclusion orders, a right not theretofore recognized. Thus, Representative Walter, in the course of the House debate on an amendment offered by Representative Meader, providing for review (98 Cong. Rec. 4414–4415), said (98 Cong. Rec. 4416):

> I do not know whether or not the American Bar Association took any official action on the position he took. But actually he even pointed out the inability to have judicial review in cases of exclusion. Where aliens have never set foot in the United States they are treated differently,

> but even they, under this bill, have a right to a review of the decision excluding them and later an appeal to the Attorney General, who will set up the kind of machinery that is now set up under the Act.

In the Senate, in the course of debate on the Morse Amendment proposing to make either declaratory judgment or habeas corpus review open to "every person aggrieved by an adverse order in exclusion or deportation proceedings" (98 Cong. Rec. 5781), Senator McCarran said (98 Cong. Rec. 5789):

> Mr. President, the particular evil of the amendment offered by the Senator from Oregon lies in the fact that it upsets a principle of law which has been unchallenged by any nation within the memory of man.
>
> The amendment would accomplish this by granting a right of review to "every person aggrieved by an adverse order in exclusion" proceedings.
>
> The grant of a right of review implies that there is a basic, justiciable, underlying right to be litigated. But, Mr. President, no alien has ever had a right to enter the United States. No alien to any country has ever had a right to enter that country. No country on earth today gives non-nationals any legal, moral, or equitable right, any justiciable right at all, to cross its borders as immigrants. But this amendment would have the United States

grant such a right, by necessary implication of the language of the amendment with respect to review of exclusion proceedings, to any and every person anywhere in the world who may at any time in the future desire to come to the United States as an immigrant.

From time immemorial, a sovereign nation has had the absolute right to admit or exclude aliens. If we take the step of waiving that right for this Nation, the next step is likely to be a demand that the adjudication of the alleged right of an alien to come to the United States be vested in an international tribunal set up by the United Nations.

* * * To adopt this amendment would be to overturn, to the detriment of the United States, one of the basic principles of international law and national sovereignty. I urge that the amendment be defeated.

7. None of the practical reasons which favor a hospitable attitude toward declaratory judgment review of deportation orders apply to exclusion. This Court in *Shaughnessy* v. *Pedreiro*, 349 U. S. at 51, found that it would not be in keeping with either the 1952 Immigration and Nationality Act or the Administrative Procedure Act to require a resident alien to interrupt his normal course of life, by submitting to custody, in order to seek judicial review. That reasoning does not apply to aliens seeking admission. Such persons have ordinarily no established ties, no normal course of

life in the United States. If they come to this country seeking entry, they are initially taken into custody at the port before they can commence their residence. They must either be kept in detention until their claims to admission are determined, or allowed in the United States on parole, with the knowledge that they cannot really establish any orderly manner of living until their claims are determined. Fairness to the United States, to the alien himself and to the transportation lines which brought him[6] requires that issues as to admissibility be determined with the greatest possible dispatch.

Habeas corpus is a far more expeditious remedy than a declaratory judgment action, for a number of reasons. While the eight year delay since the order of exclusion in this case may not be typical, delays of several years through administrative review proceedings are not uncommon. If an issue of fact requiring a trial is presented, crowded court calendars in the districts of important ports of entry or the District of Columbia inevitably result in a delay of two to four years, even if no dilatory tactics are attempted. Such delay in the determination of an issue as to whether an alien ought to be in the United States

[6] The transportation line may be liable for maintenance expenses incurred while the applicant for entry is detained. Section 233 of the Immigration and Nationality Act of 1952, 66 Stat. at 197, 8 U. S. C. (1952 ed.) 1223.

at all tends to frustrate the whole purpose of the exclusion procedure.

It is significant that the report of the commission appointed by former President Truman to study the immigration laws, which was in many respects critical of the 1952 Act, recommended that no change be made in what it conceived to be the then existing law, that "habeas corpus will continue to be the appropriate remedy open to an alien excluded at a port of entry who wishes to challenge a final order of exclusion" (*Whom We Shall Welcome*, Report of the President's Commission on Immigration and Naturalization (1953) p. 170). The recent recommendations by the President for changes in the 1952 Act would, while regulating procedure, keep declaratory relief for review of deportation orders, but would make explicit that all exclusion orders are subject to review only by habeas corpus.[7] There is no reason why an excluded alien should seek review in any district other than the port of entry, and at the port there is no reason why he should not be held to the expeditious and complete remedy specifically designed to test the validity of detention—the writ of habeas corpus.

[7] Bills to such effect were introduced February 8, 1956, S. 3169 and H. R. 9182, 84th Cong., 2d Sess., but no quick action is currently expected. The government regards the question as too important, both administratively and to the courts, to allow the present decision to stand while awaiting the eventual outcome of the proposed legislation which, insofar as it pertains to exclusion orders, is in our view wholly declaratory.

In summary, the pertinent considerations of legislative interpretation—language, historical background, statutory structure, legislative history and practical effect—support the view that the holding below is incorrect and that exclusion orders are reviewable only in habeas corpus proceedings.

CONCLUSION

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
ISABELLE CAPPELLO,
Attorneys.

MARCH, 1956.